

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



ORIGINAL **75-7183**

*To be argued by*  
JOHN T. SHEAN, ESQ.

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**United States Court of Appeals**

FOR THE SECOND CIRCUIT

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SAMUEL CHANEYFIELD,

*Plaintiff-Appellant,*

*against*

THE CITY OF NEW YORK and MATHEWS & CHASE,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

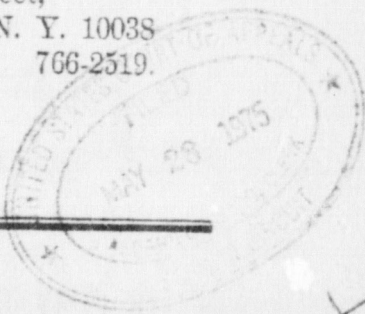
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**BRIEF OF DEFENDANT-APPELLEE,  
THE CITY OF NEW YORK**

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J. ROBERT MORRIS,  
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111 Fulton Street,  
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766-2519.

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# United States Court of Appeals

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

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**BRIEF SUBMITTED ON BEHALF OF DEFENDANT-  
APPELLEE, CITY OF NEW YORK**

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## **Introductory Statement**

Plaintiff appeals from a judgment entered on February 27, 1975 dismissing the plaintiff's complaint upon the ground that the Court lacks jurisdiction of the cause of action set forth in the complaint in that it does not arise under the Federal Metal & Non-Metallic Mine Safety Act, Title 30 U.S.C. Section 721, et seq.

### **Facts**

The plaintiff on September 13, 1971 was employed by Perini Construction Company, one of the sub-contractors, working in a tunnel known as the North River Water Pollution Control Project. The plaintiff, employed as an operator, was allegedly injured when the locomotive operated by the plaintiff became disengaged from several cars and he fell from the cab of the locomotive causing himself injury.

The plaintiff sues the City of New York and the co-defendant Mathews & Chase alleging violation of Chapter 21 of the Federal Metal & Non-Metallic Mine Safety Act, Title 30 U.S.C. Section 721, et seq., alleging in substance that the defendants operated a mine within meaning and intent of the Act.

### **POINT 1**

#### **The District Court lacks jurisdiction over the subject matter set forth in the complaint.**

The District Court properly ruled that it had no jurisdiction over the plaintiff's cause of action as the plaintiff was not working within a mine pursuant to the Federal Metal & Non-Metallic Mine Safety Act, Title 30 U.S.C. Section 721, et seq., which does not provide a private right of action.

Section 721(b) states that the term "mine" means (1) an area of land from which minerals other than coal or lignite are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (2) private ways and roads appurtenant to such area, and (3) land, excavations, underground passageways, and workings, structures, fa-

cilities, equipment, machines, tools or other property, on the surface or underground, used in the work of extracting such minerals other than coal or lignite from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in the milling of such minerals, except that with respect to protection against radiation hazards such term shall not include property used in the milling of source material as defined in the Atomic Energy Act of 1954, as amended.

(c) The term "operator" means the person, partnership, association, or cooperation, or subsidiary of a corporation operating a mine, and owning the right to do so, and includes any agent thereof charged with responsibility for the operation of such mine.

The City of New York had retained several contractors to dig the tunnel to assist in disposing of sewage. It did not operate a facility where the mineral removal from the earth would enter commerce, simply disposed of in order to complete the tunnel which runs a considerable distance in the Borough of Manhattan.

Nowhere in the complaint is there an allegation that the Secretary of Interior regarded this project as a mine by exercising jurisdiction over its operation nor is there any allegations that inspections were performed and a violation discovered.

Appellant's counsel has not cited one case which would substantiate his position that the City of New York was operating a mine within the meaning of the Statute.



**CONCLUSION**

**The Order and Judgment by the Court below  
should be affirmed.**

Respectfully submitted,

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By: **JOHN T. SHEAN,**  
*Of Counsel*







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hereby admitted this 27<sup>th</sup> day  
of May, 1975

Conoran and Brady  
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of May, 1975  
Kroll, Edelmer, Elser & Wilson  
Attorney for Defendant Appellee mother & child

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